IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 7978 of 2004

Between:

M/s. Vijayalakshmi Cashew Company Palasa-Kasibugga Srikakulam District, rep by Manager MR. Challappuva Ravindran Pillai

..... PETITIONER

AND

1 Assistant Commercial Tax Officer, Anaparthi, East Godavari

District
2 Assistant Commercial Tax Officer, Jagannaickpur, Kakinada

East Godavari District
3 Assistant Commercial Tax Officer, Samalkot, East Godavari

District
4 Assistant Commercial Tax Officer, Int., Aryapuram,

Rajahmundry, East Godavari District
5 Assistant Commercial Tax Officer, Int., Peddapuram, East

Godavari District
6 Assistant Commercial Tax Officer, Int., Tuni, East Godavari

District
7 Assistant Commercial Tax Officer, Int., Pithapuram, East

Godavari District
8 Deputy Commercial Tax Officer Narsipatnam, Visakhapatnam

District
9 Deputy Commissioner (CT) Kakinada Division, Kakinada
10 Deputy Commissioner (CT) Visakhapatnam Division,

Visakhapatnam
11 Assistant Commissioner (CT)LTU Vizianagaram Division,

Vizianagaram

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ Mandamus or any other appropriate Writ or order or direction declaring that the action of the Respondent 1 to 10 in collecting Tax under APGST Act on purchase of Cashew nuts during transport as without jurisdiction and in violation of Rules and direct the Respondent 1 to 8 to refund the amount of Rs. 2,88,506/- and also interdict the Respondents form Collecting tax in such manner by stoppage of the consignments and award exemplary costs.

Counsel for the Petitioner:MR.P.SRINIVASA REDDY

Counsel for the Respondents: GP FOR COMMERCIAL TAXES

Mr K.Raji Reddy (Spl.S.C.for Commercial Taxes

The Court made the following O R D E R:

(Per the Hon'ble Sri Justice Bilal Nazki).

Heard learned counsel for the parties. Counter has not been filed although several opportunities had been given. On 09-08-2004, we had made it clear that if counter is not filed within two weeks, the respondents' counter shall not be taken on record. Today also counter has not been filed, therefore, we have heard learned counsel for the petitioner.

The grievance of the petitioner is that he is importing cashew nuts from several places within the State and outside the State, and respondents 1 to 8 have made a practice of collecting tax on cashew nuts at the check-post without any authority of law. According to him, an amount of Rs.2,88,506/- has been collected from him from 13-04-2004 to 21-04-2004 under the 18 receipts which are annexed with the writ petition. He submits that such a practice is illegal, and without any authority of law the vehicles are being stopped at check-post and the petitioner is being made to pay the tax. No notice is given, no violation is attributed to the petitioner, but still the tax is collected. The respondents have not been able to show us any power, under which such a course can be adopted, which appears to be illegal and it is contended that in ***Goodhealth Agro Tech Limited v. Commercial Tax Officer (A.P),*** this practice of authorities collecting tax by detaining vehicles, although there is no violation attributed to the petitioner, was deprecated. It is settled that the respondents cannot collect any money from anybody, unless it is permissible under law and can only be collected in the method permissible by law.

Since, nothing has been shown to us permitting respondents to take up such a course and as counter is also not filed, therefore, the allegation made in the writ affidavit has to be taken to be true. We allow the writ petition and direct the respondents to refund the money to the petitioner along with interest at the rate of 12%, which is the rate, at which the assessees have to pay tax in case of payment of sales tax.

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(BILAL NAZKI, J)

23rd August, 2004.

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(S.ANANDA REDDY, J)

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To

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Vizianagaram

12 Two C.Cs to the Government Pleader for Commercial Taxes,

High Court Buildings, A.P., Hyderabad (OUT)

13 Two C.D. copies